

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRANDON SMETANA, SKYCOIN
GLOBAL FOUNDATION LIMITED, a
Singapore company, and SYMBOLIC
ANALYTICS INC., a Delaware corporation,

Plaintiffs,

v.

BRADFORD STEPHENS, AARON KUNSTMAN,
JOEL WAYNE CUTHRIELL, MORGEN PECK,
CATHERINE BYERLY, ADVANCE MAGAZINE
PUBLISHERS INC. d/b/a THE NEW YORKER,
and UNKNOWN INDIVIDUALS and
COMPANIES,

Defendants.

Civil Action No. 24-cv-08617

Judge: Hon. John Robert Blakey

Magistrate Judge: Hon. Keri L. Holleb
Hotaling

AGREED MOTION TO STAY DISCOVERY

Plaintiffs Brandon Smetana, Skycoin Global Foundation Limited, and Symbolic Analytics Inc. (collectively, “Plaintiffs”) and Defendant Advance Magazine Publishers Inc. d/b/a The New Yorker (“The New Yorker”), Defendant Joel Wayne Cuthriell (together, the “Parties), by and through their respective undersigned counsel, respectfully request this Court stay all discovery in the above-captioned proceeding pending this Court’s Decision on Defendant The New Yorker’s Motion to Dismiss or in the Alternative to Transfer (Dkt. No. 15), and in support state as follows:

1. Plaintiffs filed this action in the Circuit Court of Cook County, Illinois, on April 4, 2024. With respect to Defendant The New Yorker, Plaintiffs brought one claim for defamation. On September 18, 2024, Defendant The New Yorker removed this action to federal court based on diversity jurisdiction pursuant to 28 U.S.C. §§ 1332(a), 1441(b). Dkt. No. 1.

2. On October 21, 2024, Defendant The New Yorker filed a motion to dismiss the SAC, under Fed. R. Civ. P. 12(b)(3) & 28 U.S.C. § 1406(a), or in the Alternative, to Transfer Pursuant to 28 U.S.C. § 1404(a) to the Southern District of New York. *See* Dkt. No. 15. The Court set a briefing schedule on the motion to dismiss. Dkt. No. 19.

3. District courts have extremely broad discretion in controlling discovery, including to stay discovery. *See Crawford-El v. Britton*, 523 U.S. 574, 598-601 (1998); Fed. R. Civ. P. 26. Courts routinely stay discovery where, as here, a motion to dismiss is pending and/or relates to a threshold legal issue. *See, e.g., In re Clearview AI, Inc. Consumer Priv. Litig.*, No. 21 C 135, 2021 WL 5862495, at *1 (N.D. Ill. Aug. 31, 2021) (collecting cases). Moreover, while the filing of such a motion does not mean that a court will automatically stay discovery, “such stays are granted with substantial frequency.” *Bilal v. Wolf*, No. 06 C 6978, 2007 WL 1687253, at *1 (N.D. Ill. June 6, 2007).

4. The New Yorker’s Motion to Dismiss for Improper Venue could resolve this case in its entirety—as to all parties—making a stay of discovery especially appropriate. *See In re Clearview*, 2021 WL 5862495, at *2; *see also Bilal*, 2007 WL 1687253, at *1 (“Stays of discovery are not disfavored and are often appropriate where the motion to dismiss can resolve the case-at least as to the moving party.”). The New Yorker’s alternative request for a transfer of this action to the Southern District of New York likewise recommends staying discovery until the motion’s resolution. *See Thakkar v. ProctorU, Inc.*, No. 21-2051, 2021 WL 2589019, at *1 (C.D. Ill. May 24, 2021) (granting stay of discovery in light of pending motions to dismiss and transfer, noting “if the Court grants Defendant’s Motion to Transfer Venue, this case will be transferred to another court.”).

5. In addition, several named Defendants have not been served so commencing discovery at this time, even if the matter did remain in this Court would be inefficient.

6. While Plaintiffs believe they have brought this action in a proper venue, in the interest of conserving the Parties' and the Court's resources, they are agreeable to a stay of discovery pending resolution of Defendant The New Yorker's Motion to Dismiss, or in the Alternative, to Transfer. Therefore, the Parties agree a stay is appropriate pending resolution these Motions. *See Sprague v. Brook*, 149 F.R.D. 575, 578 (N.D. Ill. 1993) (staying discovery pending resolution of a motion to dismiss).

7. Moreover, the Parties that have appeared in this case make this request to stay discovery jointly, and as such, a stay of discovery pending resolution of the early potentially dispositive motion will not prejudice any party.

8. Therefore, because good cause exists, the Parties respectfully request this Court stay discovery until Defendant The New Yorker's Motion to Dismiss, or in the Alternative, to Transfer is fully briefed and adjudicated.

WHEREFORE, Defendant The New Yorker, Defendant Joel Wayne Cuthriell, and Plaintiffs Brandon Smietana, Skycoin Global Foundation Limited, and Symbolic Analytics Inc. respectfully request that this Court enter an order staying all discovery in this matter until the Motion to Dismiss, or in the Alternative, to Transfer is fully briefed and adjudicated

Respectfully submitted,

Dated: November 8, 2024

/s/ James A. Karamanis

James A. Karamanis
Barney & Karamanis, LLP
180 N. Stetson Avenue, Suite 3050
Chicago, Illinois 60601
Phone: (312) 553-5300

/s/ Kate Bolger

Kate Bolger
Nimra H. Azmi (*pro hac vice* forthcoming)
Davis Wright Tremaine LLP
1251 Avenue of the Americas, Floor 21
New York, NY 10020

james@bkchicagolaw.com

Attorneys for Plaintiffs

Phone: (212) 489-8230

katebolger@dwt.com

nimraazmi@dwt.com

Conor McDonough

Davis Wright Tremaine LLP

300 North LaSalle Street, Suite 2200

Chicago, Illinois 60654

Phone: (312) 820-5460

conormcdonough@dwt.com

Brian Sher

Steve Trubac

Bryan Cave Leighton Paisner LLP

161 North Clark Street, Suite 4300

Chicago, Illinois 60601

Phone: 312-602-5000

brian.sher@bclplaw.com

steve.trubac@bclplaw.com

*Attorneys for Defendant Advance Magazine
Publishers d/b/a The New Yorker*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 8, 2024, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system.

/s/ Kate Bolger

Kate Bolger